LORIUM LAW
Uncommon Perspective

JOSEPH D. GARRITY, ESQ.
101 N.E. THIRD AVENUE, SUITE 1800
FORT LAUDERDALE, FLORIDA 33301
JGarrity@LoriumLaw.com
Main: (954) 462-8000
Direct: (954) 331-1294
Cell: (954) 821-7204

Joseph D. Garrity
Lorium Law, P.A.
101 Northeast Third Avenue, Suite 1800
Fort Lauderdale, FL 33301
Telephone: (954) 462-8000
jgarrity@loriumlaw.com
May 22, 2026

VIA ECF
The Honorable Jessica S. Allen, U.S.M.J.
United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: Zirvi v. Illumina, Inc., et al., Civil Action No. 2:23-cv-01997-MCA-JSA

Request to Restore Public Access to ECF 107-7 / ECF 153 that includes and to Unseal or Require Production of Materials Supporting Continued Sealing of ECF 1 Exhibits 6, 7, and 8

Dear Judge Allen:

I write on behalf of Plaintiff Dr. Monib A. Zirvi regarding the temporary restriction of ECF 107-7, later docketed as ECF 153, and the continued sealing of Exhibits 6, 7, and 8 to ECF 1. Thermo Fisher did not file any motion, declaration, privilege log, proposed redactions, common-interest agreement, retainer agreement, or Local Civil Rule 5.3 showing by the May 21, 2026, deadline. Because Thermo Fisher bore the burden of justifying continued restriction and failed to carry that burden, Dr. Zirvi respectfully requests that the Court restore public access to ECF 107-7 in full, in the same form in which it was submitted and publicly docketed as ECF 153.

ECF 107-7 / ECF 153 is not a collateral filing or a miscellaneous collection of emails. It is a 1,679-page composite exhibit containing years of communications among Dr. Zirvi, Cornell University counsel, Akin Gump attorneys including Matthew Pearson, coinventors, and other participants in the Cornell v. Illumina litigation. The exhibit covers discovery, inventor coordination, technical analysis, claim construction, PTAB strategy, source-code issues, settlement-related communications, and post-settlement concerns. Many of the communications are expressly labeled privileged, confidential, attorney-client privileged, work product, or common interest. The exhibit therefore bears directly on the

issues that led to dismissal of Dr. Zirvi's malpractice claims against Akin Gump, Matthew Pearson, and Angela Verrecchio, including whether Dr. Zirvi adequately alleged an attorney-client relationship, reasonable reliance, and a duty owed by Akin Gump counsel.

The opening emails illustrate the point. In February 2015, Cornell counsel Valerie Cross Dorn contacted Dr. Zirvi, copied Akin Gump trial counsel Matthew Pearson, explained that Cornell and Akin Gump were working together in the patent litigation against Illumina, requested records relating to Dr. Zirvi's LDR/PCR work, advised him that he might be contacted for testimony or documents, encouraged him to notify counsel if Illumina contacted him directly, and stated that Cornell could provide guidance while Akin Gump could assist with subpoenas and deposition logistics. Pearson then personally coordinated a teleconference with Dr. Zirvi. Those communications show that Dr. Zirvi was affirmatively drawn into litigation-related communications by Cornell counsel and Akin Gump trial counsel and told that Akin Gump could assist him in connection with litigation demands.

The communications did not stop there. Pearson followed up directly with Dr. Zirvi regarding the Cornell litigation, scheduled further conversations, and received Dr. Zirvi's curriculum vitae and professional background materials. The 2015 and 2016 communications then expanded into extensive technical exchanges concerning ZipCode technology, bead chemistry, primer design, oligonucleotide arrays, Markman claim construction, source-code issues, PTAB strategy, and Illumina's alleged use of the technology. Inventors were asked to review litigation materials, comment on Akin Gump's claim-construction summaries, provide technical explanations, and help refine litigation positions. These are not ordinary arm's-length witness communications. They are confidential litigation communications directly relevant to whether Akin Gump's conduct invited reliance by Dr. Zirvi and whether Akin Gump lawyers assumed duties through their communications and course of dealing with him.

The purportedly privileged and common-interest emails from 2016 and 2017 are especially probative. Those communications include confidential status reports and litigation summaries distributed to inventors concerning Cornell v. Illumina, Markman rulings, PTAB strategy, litigation positioning, and related legal analyses. Some communications expressly refer to preserving confidentiality under a Common Interest Agreement and to the attorney-client privilege established with Akin Gump. Others include privileged hearing summaries and legal analyses transmitted by Pearson to inventor recipients, including Dr. Zirvi. These communications create a dispositive dilemma for any party seeking blanket sealing. If Dr. Zirvi was outside the attorney-client or common-interest relationship, then disclosure of purportedly privileged litigation strategy to him waived confidentiality. If he was inside that relationship or within a protected common-interest circle, then the communications directly support his allegations of attorney-client relationship, invited reliance, duty, and reasonable belief. Either way, the communications are central evidence and cannot be sealed wholesale.

The common-interest doctrine does not alter this conclusion. It is not a standalone privilege and does not transform every shared communication into protected material. The Third Circuit has recognized that the doctrine functions, at most, as an exception to waiver for communications that are otherwise privileged and shared in confidence to advance a common legal interest. *Teleglobe Commc'ns Corp. v. BCE, Inc.* (*In re Teleglobe Commc'ns Corp.*), 493 F.3d 345 (3d Cir. 2007). The District of New Jersey has likewise required an underlying privilege and has rejected efforts to extend common-interest protection to communications that are business-related or not privileged in the first place. *Cooper Health Sys. v. Virtua*

Health, Inc., 259 F.R.D. 208 (D.N.J. 2009). New Jersey law is consistent: the common-interest doctrine protects only qualifying communications shared with a person or entity that actually shares the relevant legal interest, and disclosure to a person lacking such common interest waives privilege. *Laporta v. Gloucester Cnty. Bd. of Chosen Freeholders*, 340 N.J. Super. 254 (App. Div. 2001).

Nor does the existence of a joint-defense or common-interest agreement automatically cloak every document, every communication, or every business provision. In *AMEC Civil, LLC v. DMJM Harris, Inc.*, the District of New Jersey ordered production of portions of a joint-defense agreement because certain provisions were not themselves protected common legal strategy. *AMEC Civil v. DMJM Harris, Inc.*, No. 06-064 (FLW), 2008 WL 8171059 (D.N.J. July 10, 2008). Similarly, *New Jersey Second Amendment Society v. New Jersey Division of State Police* (No. A-2033-15T1, 2018 N.J. Super. Unpub. LEXIS 1438 (App. Div. June 19, 2018) rejected an automatic common-interest assumption and emphasized that the claimed protection must be supported by an adequate record. *Amerestate Holdings, LLC v. CBRE, Inc.,* (No. A-2416-17T3, 2018 N.J. Super. Unpub. LEXIS 2025 (App. Div. Sep. 4, 2018) confirms that a party may waive attorney-client privilege by placing privileged communications at issue.

Thermo Fisher has made no timely showing under those authorities. It has not identified the specific communications it contends are privileged. It has not produced a privilege log. It has not shown, communication by communication, that each email was privileged in the first instance, that each disclosure was made to further a common legal interest, that each participant was within the protected common-interest community, and that no waiver occurred. Nor has it shown any concrete, current, and particularized business injury that would justify sealing a judicial record central to claims dismissed with prejudice. Generalized invocations of business confidentiality, privilege, or common interest are legally insufficient.

The problem is especially acute because ECF 153 is not a Thermo Fisher business file. It is overwhelmingly a record of communications among Dr. Zirvi, Cornell counsel, Akin Gump attorneys, and inventors concerning Cornell v. Illumina, claim construction, source-code issues, inventor input, PTAB strategy, litigation summaries, and settlement-related concerns. Thermo Fisher and Rip Finst are not copied on the vast majority of these communications. Their absence from most of the emails makes any blanket claim of Thermo Fisher business confidentiality facially overbroad.

The public-access interest is substantial. ECF 153 is a judicial record bearing directly on claims that were dismissed with prejudice. The dismissal rested on the conclusion that Dr. Zirvi had not adequately pled an attorney-client relationship, reasonable reliance, or duty. ECF 153 is the very record that bears on those issues. Public access is particularly important where a court terminates a legal-malpractice claim at the pleading stage and the central documentary evidence concerns communications between the plaintiff, the alleged attorneys, and litigation counsel. Continued restriction would obscure the factual basis needed to evaluate whether dismissal was fair, whether the record was complete, and whether the alleged attorney-client or invited-reliance relationship was plausibly pled.

The same principles apply to Exhibits 6, 7, and 8 to ECF 1. Those exhibits are part of the pleadings and bear on issues of public interest, including the Cornell v. Illumina litigation, the settlement, the alleged role of counsel, and the factual basis for Dr. Zirvi's malpractice allegations. If Defendants contend those exhibits must remain sealed because of common-interest or attorney-client privilege, then Defendants

must produce the governing common-interest agreements and Akin Gump engagement or retainer materials on which that claim necessarily depends. Without those agreements, the Court cannot determine who the parties to the alleged common-interest arrangement were, whether Dr. Zirvi was inside or outside the protected circle, whether Thermo Fisher or Rip Finst had any right to claim confidentiality over communications on which they were not copied, whether the communications were privileged in the first place, and whether any privilege was waived.

Dr. Zirvi therefore respectfully requests that the Court require Defendants, and any party opposing public access, to produce for in camera review and for disclosure to Dr. Zirvi subject only to any narrowly justified protective limitation, all common-interest agreements, joint-defense agreements, confidentiality agreements, Akin Gump engagement letters, retainer agreements, conflict waivers, and related materials that Defendants contend support continued sealing of ECF 1 Exhibits 6, 7, and 8 or any restriction of ECF 107-7 / ECF 153. If Defendants do not produce those materials and make the required particularized showing, Exhibits 6, 7, and 8 to ECF 1 should also be unsealed in their entirety.

The requested relief is straightforward. First, because Thermo Fisher filed nothing by the May 21, 2026 deadline, the Court should restore ECF 107-7 / ECF 153 to public access in full. Second, the Court should reject any untimely or generalized request for sealing based on unsupported invocations of business confidentiality, privilege, or common interest. Third, if any party seeks to keep ECF 1 Exhibits 6, 7, and 8 sealed, the Court should require production of the common-interest agreements and Akin Gump retainer or engagement materials necessary to test that claim. Fourth, absent such production and a document-by-document, line-by-line showing of a clearly defined and serious injury, ECF 1 Exhibits 6, 7, and 8 should be unsealed in full.

Respectfully submitted,
/s/ Joseph D. Garrity
Joseph D. Garrity
Counsel for Plaintiff Dr. Monib A. Zirvi

/s/ Amar A. Agrawal, Esquire
Amar A. Agrawal, Esquire
Co-Counsel for Plaintiff Dr. Monib A. Zirvi